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EXAMINER	
TIV, BACKHEAN	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/007,164	GORE ET AL.	
	Examiner	Art Unit	
	Backhean Tiv	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10/25/07*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12,14-19 and 28-42* is/are pending in the application.

4a) Of the above claim(s) *13 and 20-27* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12,14-19 and 28-42* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Detailed Action

Claims 1-12,14-19,28-42 are pending in this application. Claims 13,20-27 have been cancelled in the Amendment filed on 10/25/07. This is action is made FINAL.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 14,16-19,34-42 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 7,197,559 issued to Goldstein et al.(Goldstein).

As per claim 14, Goldstein teaches a computer system comprising: a bus; a memory unit coupled to said bus, said memory unit including instructions for determining latency associated with a communication path extending between a customer network and one or more enterprise servers(Abstract, Figs.1-41); one or more processors coupled to said bus, the processors for executing said instructions, and when executing said instructions, operable to: determine network transport latency between the computer system and a network device located between a remote customer network and another network, said network latency corresponding to a first leg of the communication path, the first leg extending between the computer system and

the remote customer network(Abstract, Figs.1-41, col.2, lines 8-65); transmit an application test from said computer system to said electronic commerce servers wherein said application test is selected to represent at least a portion of said electronic commerce transactions(Abstract, Figs.1-4, col.7, line 34-col.8, line67); receive back a test response from the electronic commerce servers, the response for the application test(Abstract, Figs.1-4, col.7, line 34-col.8, line67); determine application test latency according to the received test response, wherein said application test latency corresponds to only a second leg of the communication path, the second leg extending from the computer system to the enterprise servers((Abstract, Figs.1-4, col.4, lines 21-67);determine a first network transport latency baseline that indicates an average of previously determined values of network transport latency for a given day and time; any determine a first application test latency baseline that indicates an average of previously determined values of application test latency for a given day and time; and display said network transport latency, said application test latency, and said baselines (Figs.1-41, col.13, lines 50-col.14, lines 50).

As per claim 16, the computer system as recited in Claim 14 wherein the processors are further operable to: calculate a second different network transport latency baseline, said second network transport latency baseline indicating the lowest calculated network transport latency during a given time period; and display said network transport latency, said first network transport latency baseline and said second network transport latency baseline on a same graph(Goldstein, Figs.1-41, col.13, lines 50-col.14, lines 50).

As per claim 17, the computer system as recited in Claim 14 wherein the processors are further operable to: calculate a second different application test latency baseline, said second application test latency baseline indicating the lowest calculated application test latency during a given time period; and display said application test latency, said first application test latency baseline and said second application test latency baseline on a same graph(Goldstein, Figs.1-41, col.13, lines 50-col.14, lines 50).

As per claim 18, the computer system as recited in Claim 14 wherein the processors are further operable to: determine and display different application component latencies for each of a plurality of application components(Goldstein, Figs.1-41, col.13, lines 50-col.14, lines 50).

As per claim 19, the computer system as recited in Claim 18 wherein the processors are further operable to: determine first application component latency baselines and second application component latency baselines for each of the plurality of application components; and generate a graph for each of said plurality of application components, each graph including one of the application component's application component latency, first application component latency baseline and second application component latency baseline(Goldstein, Figs.1-41, col.13, lines 50-col.14, lines 50).

As per claim 34, Goldstein teaches a system comprising: means for simulating a customer transaction between one or more electronic commerce servers associated with an enterprise network and an access point that at least partially defines the enterprise network, said simulating means originating test packets that mimic a

customer transaction(Abstract, Figs.1-41, col.3, lines 4-46); wherein said simulating means measures performance of an application running on the electronic commerce servers independently of network conditions of a customer network(Abstract, Figs.1-41, col.3, lines 4-46); means for measuring network transport latency between the access point and a customer device located in the customer network(Abstract, Figs.1-41, col.3, lines 4-46); and means for outputting said application performance measurements and said network latency measurements(Abstract, Figs.1-41, col.3, lines 4-46);

As per claim 35, the system of claim 34 wherein said application performance measurement isolates application performance from performance associated with network elements located in the customer network(Goldstein, Figs.1-41).

As per claim 36, the system of claim 35 wherein said network transport latency measurement isolates performance of network elements located on a communication path between the access point and the customer network from performance of the application(Goldstein, col.3, lines 4-46).

As per claim 37, the system of claim 34 means for identifying a communication path used for exchanging packets representing an electronic commerce transaction between the electronic commerce servers and the customer network;
wherein the access point is selected for the transaction simulation according to the presence of the access point on the communication path(Goldstein, col.3, lines 4-46).

As per claim 38, the system of claim 34 further comprising: means for generating a graph, the graph comparing the application performance measurement to other application performance measurements, each of the application performance

measurements included in the comparison characterizing application performance during a same time segment of a daily or weekly period(Goldstein, Figs.1-41).

As per claim 39, the system of claim 38 wherein the generated graph plots application response time versus time(Goldstein, Figs.1-41).

As per claim 40, the system of claim 34 wherein the application performance measurement includes different performance measurements for each of a plurality of application components associated with the application(Goldstein, Figs.1-41).

As per claim 41, Goldstein teaches an apparatus comprising: a bus;
a memory unit coupled to said bus, said memory unit including instructions for monitoring electronic commerce transactions one or more processors coupled to said bus, the processors for executing said instructions, and when executing said instructions(Abstract, Figs.1-41), operable to:
send first packets to one or more servers associated with a first network, the first packets representing interaction with an application associated with the servers, the first packets traveling over a first communication path extending from the servers to an access point of the first network(col.3, lines 4-46);
identify a first latency measurement according to a response to the first packets(Abstract, col.3, lines 4-46); send one or more second packets to a remote device located in a second different network, the second network being remote relative to the servers and the access point, the second packets traveling over a second communication path extending from the remote device to the access point(Abstract, col.3, lines 46-col.4, lines 36); identify a second latency measurement according to a

response to the second packets; and display the latency measurements(Abstract, col.3, lines 46-col.4, lines 36).

As per claim 42, the apparatus of claim 41 wherein the first and second communication paths are separate segments of a third communication path that communicatively couples the remote device to the servers, wherein each latency measurement corresponds to only one of the separate segments(Goldstein, Figs.1-41)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 7,197,559 issued to Goldstein et al.(Goldstein) in view of US Patent 6,711,137 issued to Klassen et al.(Klassen).

As per claim 1, Goldstein teaches a method comprising:

simulating a transaction between a customer and one or more electronic commerce servers located in an enterprise network, said simulation performed using an access device located on an perimeter of the enterprise network(Abstract, Figs.1-41, col.2, lines 8-65); wherein said simulation using the access device measures performance of an electronic commerce application independently of network conditions outside the

enterprise network(Abstract, Figs.1-41, col.2, lines 8-col.3, lines 67): measuring network transport latency between the access device and the customer network independently of latency associated with the electronic commerce application: and outputting said application performance measurement and said network transport latency measurement(Abstract, Figs.1-41, col.2, lines 8-col.3, lines 67).

Goldstein however does not explicitly teach pinging a customer network using the same access device used for said simulation.

Klassen teaches pinging a customer network using the same access device used for said simulation (col.3, lines 18-45, col.4, lines 47-50,col.5, lines 15-37).

It would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Goldstein to use pinging as taught by Klassen in order tune network performance and throughput(Klassen, col.1, lines (10-13).

One ordinary skill in the art at the time of the invention would have been motivated to combine the teachings of Klassen and Goldstein in order to provide a system to improve network performance(Klassen, col.1, lines 7-22).

As per claim 2, the method of monitoring Claim 1 further comprising: identifying a time of day associated with the measurements; determining a first network transport latency baseline using previously determined values of network transport latency for the identified time of day, the first network transport latency baseline indicating an expected transport latency for the identified time of day-and determining a first application performance baseline using previously determined values of application performance measurements for the identified time of day, the first

application performance baseline indicating an expected application performance for the identified time of day(Goldstein, Figs.13, col.13, lines 50-col.14, lines 50) .

As per claim 3, the method of Claim 1 further comprising:

identifying a time of day associated with the measurements; determining percentage deviation of said determined network transport latency measurement network transport latency from previously determined values of network transport latency for the identified time of day a given day and time; determining percentage deviation of said application performance measurement determined application test latency, from previously determined values of application performance measurement the identified time of day said application test latency for a given day, and time; and displaying the measurements and the determined percentage deviations(Goldstein, Figs.1-41, col.13, lines 50-col.14, lines 50).

It would have been obvious to one of ordinary skilled in the art at the time of the invention to calculate deviation of information in order to determine the absolute difference between one number in a set and the mean of the set for the data and display the deviation.

One of ordinary skilled in the art would have been motivated because it would have enabled the administrator to analyze the latencies more efficiently.

As per claim 4, the method of Claim 2 wherein said method further includes:

calculating a second different network transport latency, baseline, said second network transport latency baseline indicating the lowest measured calculated network transport latency during a given time period; and displaying the network transport latency

measurement and said network transport latency baselines(Goldstein, Figs.1-41, col.13, lines 50-col.14, lines 50) .

As per claim 5, the method of Claim 4 wherein a single graph is displayed that indicates the network transport latency measurement and the network transport latency baselines(Goldstein, Fig.13).

As per claim 6, the method of Claim 2 wherein said method further includes: calculating a second different application performance baseline, said second application performance test latency baseline indicating the lowest measured application performance during a given time period; and displaying the application performance measurement and said application performance test latency baselines (Goldstein, Figs.1-41, col.13, lines 50-col.14, lines 50).

As per claim 7, the method of Claim 6 wherein a single graph is displayed that indicates said application performance measurement and the application performance baselines (Goldstein, Figs.1-41, col.13, lines 50-col.14, lines 50).

As per claim 8, the method of Claim 2 further comprising measuring application performance wherein application component latency is determined for each of a plurality of application components and wherein said application performance measurements for each of said plurality of application components is displayed(Goldstein, Figs.1-41).

As per claim 9, the method of Claim 8 wherein a first application component performance baseline is determined for each of said plurality of application components(Goldstein, Figs.1-41).

As per claim 10, the method of Claim 9 wherein a second application component latency baseline is determined for each of said plurality of application components and wherein said second application component latency baseline for each of said plurality of application components is displayed(Goldstein, Figs.1-41).

As per claim 11, the method of Claim 10 wherein a graph is generated for each application component that includes the application component's application component performance , first application component latency performance and second application component performance baseline(Goldstein, Figs.1-41).

As per claim 12, the method of Claim 11 wherein said application components include a login component, an order component, a configure component and a help component(Goldstein, Figs.1-41).

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 7,197,559 issued to Goldstein et al.(Goldstein).

As per claim 15, Goldstein does not explicitly teach standard deviation, however Goldstein does teach determined network transport latency from the previously determined values of network transport latency for the given day and time; determined application test latency from the previously determined values of said application test latency for the given day and time; and displaying network transport latency and said application test latency(Figs.1-41).

It would have been obvious to one of ordinary skilled in the art at the time of the invention to calculate deviation of information in order to determine the absolute

difference between one number in a set and the mean of the set for the data and display the deviation.

One of ordinary skilled in the art would have been motivated because it would have enabled the administrator to analyze the latencies more efficiently.

Claims 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Publication 2002/0120727 issued to Curley et al.(Curley) in view of US Patent 6,711,137 issued to Klassen et al.(Klassen).

As per claim 28, Curely teaches a system comprising: one or more electronic commerce servers for conducting transactions with a computer located outside an enterprise network for the electronic commerce servers over a call path(Fig.1); a network device located on the call path between the electronic commerce servers and the computer(Fig.1, para.00136); the network device configured to mimic a customer interaction with the electronic commerce servers to determine current performance of an electronic commerce application operating in the enterprise network(para.0009-0011,0016).

Curely however does not explicitly teach the network device configured to ping a device located in a same network as the computer to determine latency between the computer and the network device; and the network device to output the latency and performance determinations.

Klassen teaches the network device configured to ping a device located in a same network as the computer to determine latency between the computer and the

network device(col.3, lines 18-45, col.4, lines 47-50,col.5, lines 15-37); and the network device to output the latency and performance determinations(Fig.6).

It would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Curley to determine transport latency in a network as taught by Klassen in order tune network performance and throughput(Klassen, col.1, lines (10-13).

One ordinary skill in the art at the time of the invention would have been motivated to combine the teachings of Klassen and Curley in order to provide a system to improve network performance(Klassen, col.1, lines 7-22).

Claims 29-33 arerejected under 35 U.S.C. 103(a) as being unpatentable over US Publication 2002/0120727 issued to Curley et al.(Curley) in view of US Patent 6,711,137 issued to Klassen et al.(Klassen) in further view of US Patent 7,197,559 issued to Goldstein et al.(Goldstein).

Curley in view of Klassen explicitly teaches testing the performance of a website from a visitor's perspective by monitoring the availability and response times for URLs, customer transactions, external content providers and more(para.0009).

However does not explicitly teach as per claim 29, the system of claim 28 wherein the network device is further configured to: generate test packets and send the generated test packets to the electronic commerce servers, the generated test packets simulating a customer endpoint sending requests to the electronic commerce application, the sent test packets to at least in part mimic the customer interaction;

receive back a response to the sent packets, the response representing completion of the mimicked customer transaction; analyze the received response to determine the current performance of the electronic commerce application operating in the enterprise network.

Goldstein explicitly teaches generate test packets and send the generated test packets to the electronic commerce servers, the generated test packets simulating a customer endpoint sending requests to the electronic commerce application, the sent test packets to at least in part mimic the customer interaction(col.3, lines 4-45); receive back a response to the sent packets, the response representing completion of the mimicked customer transaction(col.3, lines 4-45); analyze the received response to determine the current performance of the electronic commerce application operating in the enterprise network(col.3, lines 4-45).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Curley in view of Klassen to include generating and sending test packets as a way to mimic customer's transaction as taught by Goldstein in order to test and monitor operation of web-based and other transactional servers(Goldstein, col.1, lines 15-20).

One ordinary skill in the art would have been motivated to combine the teachings of Curley, Klassen, and Goldstein in order to test and monitor operation of web-based and other transactional servers(Goldstein, col.1, lines 15-20).

As per claim 30, the system of claim 29 wherein the network device is an access point located on an edge of the enterprise network and the test packets generated by

the network device simulate an actual customer ordering a product using the electronic commerce application(Curley, para.0011, Goldstein, col.3, lines 4-45). Motivation to combine set forth in claim 29.

As per claim 31, the system of claim 29 wherein the electronic commerce application comprises a plurality of application components, and the mimicked customer transaction utilizes the application components(Curley, para.0011, Goldstein, Figs.1-41, col.3, lines 4-45). Motivation to combine set forth in claim 29.

As per claim 32, the system of claim 31 wherein the application components comprise a logon component and an ordering component and the network device is further configured to: simulate the customer endpoint logging into the electronic commerce application using the generated test packets; simulate the customer endpoint ordering a product or a service using the generated test packets(Curley, para.0011, Goldstein, Figs.1-41, col.3, lines 4-45). Motivation to combine set forth in claim 29.

As per claim 33, the system of claim 29 wherein outputs indicate network latency attributed to a first leg of the call path, the first leg extending from the computer's network to the network device, and application performance based on an exchange occurring on only the second leg of the call path, the second leg extending from the network device to the electronic commerce servers(Curley, para.0011, Goldstein, Figs.1-41, col.3, lines 4-45). Motivation to combine set forth in claim 29.

Response to Arguments

The applicant have amended claims 1-12,14-19, therefore applicant's arguments with respect to these claims have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments, as per claim 28, filed 10/25/07 have been fully considered but they are not persuasive.

The applicant argues in substance, that Curely in view of Klassen does not teach, mimicking a customer interaction with the electronic commerce servers.

In reply: Curley, para.009-0011, explicitly teach "testing the performance of a website from a visitor's perspective by monitoring the availability and response times for URLs, customer transactions, external content providers and more(para.0009", and "Web managers can keep a vigilant watch on critical site performance metrics such as the time it takes to serve Web pages and the success of visitors' transaction on the site, for example from submissions, searches and purchases(para.0011)."

Therefore, Curley in view of Klassen, does explicitly teach mimicking a customer's interaction with the e-commerce servers since there is testing of performance of a website from a visitor's perspective, such as customer's transactions, form submissions, searches, and purchases.

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are

applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching of all or part of the claimed invention.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Backhean Tiv whose telephone number is (571) 272-5654. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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